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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,219	09/28/2001	David B. Kumhyr	AUS920010402US1	7154
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DAFFER MCDANEIL LLP			DENNISON, JERRY B	
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2143

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/967,219

Applicant(s)

KUMHYR ET AL.

Examiner

J. Bret Dennison

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-22, 24-33 and 35-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-22, 24-33 and 35-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Action is in response to Amendment for Application Number 09/967,219 received on 10 February 2005.
2. Claims 1-10, 12-22, 24-33, and 35-42 are presented for examination.

Claim Interpretation

3. Regarding the claimed invention, the independent claims include nothing more than obtaining a message from a sender where the message includes a destination, and deciding what application to use to relay the message to that destination to enable the recipient to read it and dividing the message into portions using multiple applications that the recipient is able to use. Examples of this would be the use of a protocol stack, or the set of TCP/IP protocols that define communication over the Internet, which are well known in the art. Loading a stack of specific protocols for transmission of data would require the recipient to be able to use these protocols.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 14, 15, 18-32, 37, and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Auerbach et al. (U.S. Patent Number 6,549,937).

4. Regarding claims 1, 7, 18, 26, and 37, Auerbach discloses a system for computer-based communication, said system comprising a computer including a storage medium, wherein the storage medium includes program instructions executable on the computer for:

receiving from a sender of the message an identification of an intended message recipient (Auerbach, col. 5, lines 40-45);

receiving from the sender a characteristic of the transmission (Auerbach, col. 6, lines 43-46);

selecting one or more communications applications to be used for transmission of the message (Auerbach, col. 6, lines 45-67, Auerbach teaches a protocol conversion platform which converts the sender's messages into protocols used by the receiver);
and

sending at least a portion of the message using each of the selected communications applications, such that the entirety of the message is sent (Auerbach, col. 7, lines 5-15.).

5. Regarding claim 2, Auerbach discloses the limitations, substantially as claimed, as described in claim 1, including wherein the received identification comprises the name of the recipient (Auerbach, col. 5, lines 40-50).

6. Regarding claims 3 and 38, Auerbach discloses the limitations, substantially as claimed, as described in claims 1 and 37, including wherein the received identification

comprises an identifier effective to identify the recipient to one of the one or more communications applications (Auerbach, col. 5, lines 50-67).

7. Regarding claim 4, Auerbach discloses the limitations, substantially as claimed, as described in claim 1, including wherein said receiving an identification is done at the initiation of a communications session, and the sending of the message is done during the communications session (Auerbach, col. 5, lines 40-67).

8. Regarding claim 5, Auerbach discloses the limitations, substantially as claimed, as described in claim 1, including wherein said selecting comprises evaluating availability of the recipient for communication using each of a set of possible communications applications (col. 6, last paragraph).

9. Regarding claim 6, Auerbach discloses the limitations, substantially as claimed, as described in claim 5, including wherein said evaluating availability comprises accessing stored availability information for the recipient (Auerbach, col. 5, lines 40-67).

10. Regarding claim 14, Auerbach discloses the limitations, substantially as claimed, as described in claim 1, including wherein the message comprises an email message, chat message, or attachment file (Auerbach, col. 5, lines 10-20).

11. Regarding claim 15, Auerbach discloses the limitations, substantially as claimed, as described in claim 14, including wherein the message comprises two or more items from the group consisting of an email message, a chat message and an attachment file (Auerbach, col. 5, lines 10-17).

12. Regarding claim 19, Auerbach discloses the limitations, substantially as claimed, as described in claim 18, including wherein the program instructions are within a communications aggregation program (Auerbach, col. 6, lines 43-67).

13. Regarding claim 20, Auerbach discloses the limitations, substantially as claimed, as described in claim 18, including wherein the computer comprises a display device and input device adapted for use by the sender of the message (Auerbach, col. 3, line 40 through col. 4, line 50).

14. Regarding claim 21, Auerbach discloses the limitations, substantially as claimed, as described in claim 18, including wherein the computer is adapted for coupling over a network to an additional computer used by the sender of the message (Auerbach, col. 4, lines 35-45).

15. Regarding claim 22, Auerbach discloses the limitations, substantially as claimed, as described in claim 21, including the additional computer, operably coupled over a network to the computer (Auerbach, col. 4, lines 35-45).

16. Regarding claim 24, Auerbach discloses the limitations, substantially as claimed, as described in claim 18, including wherein the computer is adapted for coupling over the network to an additional computer used by the recipient of the message (Auerbach, col. 4, lines 35-45).

17. Regarding claim 25, Auerbach discloses the limitations, substantially as claimed, as described in claim 24, including the additional computer, operably coupled over a network to the computer (Auerbach, col. 4, lines 35-45).

18. Regarding claim 27, Auerbach discloses the limitations, substantially as claimed, as described in claim 26, including wherein the first and second program instructions are within a communications aggregation program stored on the carrier medium (Auerbach, col. 4, lines 50-67).

19. Regarding claim 28, Auerbach discloses the limitations, substantially as claimed, as described in claim 26, including wherein the second program instructions are further executable for evaluating availability of the recipient for communication using each of a set of possible communications applications (Auerbach, col. 4, lines 50-67).

20. Regarding claim 29, Auerbach discloses the limitations, substantially as claimed, as described in claim 28, including wherein the second program instructions are

Art Unit: 2143

executable for accessing stored availability information for the recipient (Auerbach, col. 4, lines 50-67, col. 5, lines 40-67).

21. Regarding claim 30, Auerbach discloses the limitations, substantially as claimed, as described in claim 29, including a data structure including the availability information (Auerbach, col. 3, line 30, col. 5, lines 40-67).

22. Regarding claim 31, Auerbach discloses the limitations, substantially as claimed, as described in claim 30, including wherein the data structure further stores a set of recipient identifiers effective to identify the recipient to each of the multiple communications applications (Auerbach, col. 3, line 30, col. 5, lines 40-67).

23. Regarding claim 32, Auerbach discloses the limitations, substantially as claimed, as described in claim 30, including wherein the data structure comprises an object in an object-based programming approach (Auerbach, col. 3, line 30, col. 5, lines 40-67).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-10, 33, and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auerbach et al. (U.S. Patent Number 6,549,937) in view of Rudd et al. (U.S. Patent Application Publication Number 2003/0055844).

24. Regarding claims 8, 9, 10, 33, and 40-42 Auerbach teaches the limitations substantially as claimed, as described in claims 7, 26, and 37. Auerbach does not explicitly state wherein the characteristic comprises a speed of the transmission, level of security, and size of the message. In an analogous art, Rudd teaches that the sender has the ability to set characteristics such as transmissions rates and file sizes (Rudd, page 4, paragraph 34). Therefore it would have been obvious to one in the ordinary skill in the art at the time of the invention to incorporate the user being able to set characteristics of transmission for the benefit of being able to apply different setting to different recipients for better efficiency (Rudd, paragraph 34) and to consider the effects that certain characteristics have on transmission (Rudd, paragraph 4).

Claims 12-13, 16, 17, 35, 36, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auerbach et al. (U.S. Patent Number 6,549,937) in view of Pearson (U.S. Patent Number 5,903,754).

25. Regarding claims 12, 35, and 39, Auerbach discloses the limitations, substantially as claimed, as described in claims 1, 26, and 37, including wherein multiple communications applications are selected, further comprising dividing the message into separate portions appropriate for sending by the respective selected

Art Unit: 2143

communications applications, prior to said sending. However, Auerbach does not explicitly state wherein multiple communications applications are selected, further comprising dividing the message into separate portions appropriate for sending by the respective selected communications applications, prior to sending. In an analogous art, Pearson discloses a system and method for building a protocol stack for use by a communication program to establish a data transfer protocol (Pearson, col. 4, lines 45-50). Therefore it would have been obvious to one in the ordinary skill in the art at the time of the invention to incorporate the protocol stack of Pearson into Auerbach to provide a protocol stack where the protocol layers can be defined such that each layer performs a specific protocol function, and making them interchangeable and independently modifiable (Pearson, col. 4, lines 30-43).

26. Regarding claim 13, Auerbach and Pearson disclose the limitations, substantially as claimed, as described in claim 1, including wherein the sender is not notified of the communications applications used to send the message (Auerbach, see abstract).

27. Regarding claims 16 and 36, Auerbach and Pearson disclose the limitations, substantially as claimed, as described in claims 11 and 34, including retrieving one or more recipient identifiers effective to identify the recipient to each of the selected communications applications, prior to said sending (Auerbach, col. 5, lines 40-67).

28. Regarding claim 17, Auerbach and Pearson disclose the limitations, substantially as claimed, as described in claim 16, including wherein said retrieving comprises accessing a data structure storing the recipient identifiers (Auerbach, col. 5, lines 40-67).

Response to Amendment

Applicant's arguments and amendments filed on 10 February 2005 have been carefully considered but they are not deemed fully persuasive. Examiner has changed the grounds of rejection as explained in the following response to Applicant's arguments.

Applicant's arguments with respect to claims 1-10, 12-22, 24-33, and 35-42 have been fully considered but they are not persuasive. Applicant's arguments include the failure of previously applied art to expressly disclose the teachings of "sending at least a portion of a message using each of the selected communications applications, such that the entirety of the message is sent [see Applicant's Response, page 8].

It is evident from the mappings found in the above rejection that Auerbach discloses the teaching of sending a message based on the selection of a specific format and protocol required by service providers [see Auerbach, col. 6, lines 50-60]. The specification defines a communication application as a communication technique for sending information. A common communication technique for sending information is a protocol, which is well known in the prior art.

To further clarify Examiner's interpretation of the claimed invention, Applicant only claims selecting a communications application so send a message. Examiner

would like to point out that even though Auerbach did disclose selecting multiple communication applications for sending a message, the independent claims only require one communication application as currently written. Therefore, any prior art including transmitting a message would disclose the limitations of the independent claims.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, being able to apply different setting to different recipients for better efficiency (Rudd, paragraph 34) and to consider the effects that certain characteristics have on transmission (Rudd, paragraph 4).

Thus, Applicant's arguments drawn toward distinction of the claimed invention and the prior art teachings on this point are not considered persuasive. It is also clear to the Examiner that Auerbach clearly taught the independent claims of the Applicant's claimed invention.

Furthermore, as it is Applicant's right to continue to claim as broadly as possible their invention, it is also the Examiner's right to continue to interpret the claim language as broadly as possible. It is the Examiner's position that the detailed functionality that

allows for Applicant's invention to overcome the prior art used in the rejection, fails to differentiate in detail how these features are unique. As it is extremely well known in the networking art as already shown by Auerbach as well as other prior arts of records disclosed sending a message using a communications application is taught as well as other claimed features of Applicant's invention. By the rejection above, the applicant must submit amendments to the claims in order to distinguish over the prior art use in the rejection that discloses different features of Applicant's claimed invention.

It is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in manner, which distinguishes over the prior art.

Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterates the need for the Applicant to more clearly and distinctly define the claimed invention.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant.

Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part

Art Unit: 2143

of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

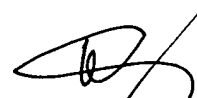
Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Bret Dennison whose telephone number is (571) 272-3910. The examiner can normally be reached on M-F 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. B. D.
Patent Examiner
Art Unit 2143



DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100